

## **MDM Declaration Exhibit A-06**

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK  
4 No. 18 Civ. 2949 (ARR) (RER)

- - - - -x

5  
6 SUSANNA MIRKIN and BORIS MIRKIN,  
Individually and on Behalf of All Others  
Similarly Situated,

7  
8 Plaintiffs,

-against-

9  
10 XOOM ENERGY, LLC and XOOM ENERGY  
NEW YORK, LLC,  
11 Defendants.

12 - - - - -x

13  
14 16 Court Street  
Brooklyn, New York 11241  
15 August 30, 2022

1:28 PM

16  
17 DEPOSITION of BORIS MIRKIN, a  
18 Plaintiff in the above-entitled action,  
19 held at the above time and place, taken  
20 before SAMUEL HITTIN, a Shorthand Reporter  
21 and Notary Public of the State of New  
22 York, pursuant to the Federal Rules of  
23 Civil Procedure, order and stipulations  
24 between Counsel.

25 \* \* \*

Page 1

<p>1 2 APPEARANCES: 3 4 WITTELS, McINTURFF, PALIKOVIC 5 Attorneys for Plaintiffs 6 SUSANNA MIRKIN and BORIS MIRKIN 7 295 Madison Avenue 8 New York, New York 10017 9 (914)775-8862 10 BY: STEVEN WITTELS, ESQ. 11 AND: STEVEN COHEN, ESQ. 12 13 14 MCDOWELL HETHERINGTON, LLP 15 Attorneys for Defendants 16 XOOM ENERGY, LLC AND XOOM ENERGY 17 NEW YORK, LLC 18 1001 Fannin Street, Suite 2700 19 Houston, Texas 77002 20 (713)337-5580 21 BY: MATT MATTHEWS, ESQ. 22 23 24 25 ALSO PRESENT: 26 VERITEXT VIDEOGRAPHER 27 BY: ZEF COTA 28 29 * * * 30 31 32 33 34 35</p>	<p>1 2 controlled thereby. 3 The filing of the original of this 4 deposition is waived. 5 IT IS FURTHER STIPULATED, a copy of 6 this examination shall be furnished to the 7 attorney for the witness being examined 8 without charge. 9 10 * * * 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 2	Page 4
<p>1 2 STIPULATIONS 3 IT IS HEREBY STIPULATED, by and among 4 the attorneys for the respective parties 5 hereto, that: 6 All rights provided by the C.P.L.R., 7 and Part 221 of the Uniform Rules for the 8 Conduct of Depositions, including the 9 right to object to any question, except as 10 to form, or to move to strike any 11 testimony at this examination is reserved; 12 and in addition, the failure to object to 13 any question or to move to strike any 14 testimony at this examination shall not be 15 a bar or waiver to make such motion at, 16 and is reserved to, the trial of this 17 action. 18 This deposition may be sworn to by the 19 witness being examined before a Notary 20 Public other than the Notary Public before 21 whom this examination was begun, but the 22 failure to do so or to return the original 23 of this deposition to counsel, shall not 24 be deemed a waiver of the rights provided 25 by Rule 3116, C.P.L.R., and shall be</p>	<p>1 2 THE VIDEOGRAPHER: Good 3 afternoon. We are going on the record 4 at 1:29 p.m. Eastern Daylight Time on 5 August 30, 2022. 6 This is media unit one of the 7 video-recorded deposition of Boris 8 Mirkin, taken by counsel for the 9 defendant in the matter of Susanna 10 Mirkin and Boris Mirkin, et al., verse 11 XOOM Energy, LLC, and XOOM Energy New 12 York, LLC, filed in the United States 13 District Court of New York, Case 14 Number 18-CIV-2949. 15 The location of this deposition 16 is Veritext Brooklyn, 16 Court Street, 17 Brooklyn, New York. 18 My name is Zef Cota, 19 representing Veritext, and I am the 20 videographer. The court reporter is 21 Samuel Hittin, from the firm Veritext. 22 I am not authorized to administer an 23 oath, I am not related to any party in 24 this action, nor am I financially 25 interested in the outcome.</p>
Page 3	Page 5

1  
2 [Appearances inserted by court  
3 reporter from previous witness's  
4 transcript.]  
5 MR. MATTHEWS: This is Matt  
6 Matthews with the law firm of McDowell  
7 Hetherington on behalf of the  
8 defendants, XOOM Energy.  
9 MR. WITTELS: Steven Wittels for  
10 the plaintiff, Mirkins. I'm together  
11 with my co-counsel, Steve Cohen --  
12 Steven Cohen, from the law firm  
13 Wittels, McInturff, Palikovic.  
14 THE VIDEOGRAPHER: Counsel and  
15 all present in the room have been  
16 noted for the stenographic record.  
17 Will the court reporter please  
18 swear in the witness, and counsel may  
19 proceed.  
20  
21 B O R I S M I R K I N, the Witness  
22 herein, having first been duly sworn by  
23 the Notary Public, was examined and  
24 testified as follows:  
25 BY COURT REPORTER:

Page 6

1  
2 Q. Please state your name for the  
3 record?  
4 A. Boris Mirkin.  
5 Q. Please state your address for  
6 the record?  
7 A. 1677 East 34th Street, Brooklyn,  
8 New York 11234.  
9 EXAMINATION BY  
10 MR. MATTHEWS:  
11 Q. Mr. Mirkin, thank you for being  
12 here this afternoon.  
13 A. Thank you.  
14 Q. My name is Matt Matthews, and I  
15 represent the defendants in this case,  
16 XOOM Energy and XOOM Energy New York.  
17 Do you understand that?  
18 A. Yes, I do.  
19 Q. Okay. Great.  
20 And before we dive in, I'll go  
21 over some ground rules. I guess, the  
22 first one, can you please state your full  
23 name for the record.  
24 A. My name is Boris Mirkin,  
25 M-I-R-K-I-N.

Page 7

1 B. MIRKIN  
2 Q. All right. Thank you.  
3 And, Mr. Mirkin, have you ever  
4 been deposed before?  
5 A. Yes.  
6 Q. When was that?  
7 A. I worked as a police officer for  
8 NYPD. I've done a few. It was part of my  
9 job. Not in civil cases.  
10 Q. In criminal cases --  
11 A. Yes.  
12 Q. -- you've been deposed?  
13 A. Yes.  
14 Q. As a witness?  
15 A. As a -- how's it called? As a  
16 complainant. As an arresting officer.  
17 Q. Understood.  
18 A. As a complainant.  
19 Q. Yes, sir.  
20 And about how many times have  
21 you had to give your deposition in  
22 criminal matters?  
23 A. Probably five, six.  
24 Q. Okay. So you're somewhat  
25 familiar with the process?

Page 8

1 B. MIRKIN  
2 A. Somewhat.  
3 Q. Okay. But you've never given  
4 your deposition in a civil case?  
5 A. No, never.  
6 Q. Okay. I'll go over some basic  
7 rules, just to be sure we're all on the  
8 same page for today.  
9 You understand your testimony is  
10 being provided under oath --  
11 A. Yes.  
12 Q. -- with the same sort of weight  
13 and consequences as if you were in a  
14 courtroom in front of a judge and a jury,  
15 correct?  
16 A. Yes.  
17 Q. Okay. And you are doing a good  
18 job at giving verbal responses so far to  
19 my questions, which is, of course,  
20 important so our court reporter can take  
21 it down. So please keep that up. Okay?  
22 A. Okay.  
23 Q. You're also doing a good job of  
24 letting me finish my questions, even if  
25 I'm fumbling with it. Or if you're

Page 9

1 B. MIRKIN  
 2 A. Always in Brooklyn.  
 3 Q. Your current address is 1677  
 4 East 34th Street?  
 5 A. Yes, it is.  
 6 Q. How long have you lived at that  
 7 address?  
 8 A. 12 years.  
 9 Q. And you and your wife own that  
 10 property, correct?  
 11 A. I own it, because I bought the  
 12 house before I got married.  
 13 Q. Understood.  
 14 A. So, technically, it's on me.  
 15 Q. Understood.  
 16 And have you ever owned any  
 17 other properties?  
 18 A. No.  
 19 Q. Have you ever -- during the time  
 20 that you've lived on 34th Street, have you  
 21 also rented any additional properties?  
 22 A. No.  
 23 Q. Let me -- may I see the  
 24 documents that you have there?  
 25 A. Yes. (Handing).

Page 18

1 B. MIRKIN  
 2 Q. Thank you. Do we have -- oh,  
 3 there we go. Thank you.  
 4 Okay. I'm going to hand you  
 5 back that stack, and at the top is  
 6 Exhibit 4, what was previously marked as  
 7 Exhibit 4.  
 8 A. Okay.  
 9 Q. Have you seen this document  
 10 before?  
 11 A. Yes.  
 12 Q. This is a new customer  
 13 enrollment for natural gas, with a  
 14 February 2013 date. It's an e-mail.  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. The Boris Mirkin that's listed  
 18 on here is not you, correct?  
 19 A. It's not me.  
 20 Q. Okay. Is that a relative?  
 21 A. Distant relative.  
 22 Q. Distant relative. Okay.  
 23 But this is never an address  
 24 you've lived at --  
 25 A. No. It's not me. I never lived

Page 19

1 B. MIRKIN  
 2 on Staten Island.  
 3 Q. Got it.  
 4 And you've never had natural gas  
 5 service from XOOM?  
 6 A. No, never.  
 7 Q. Okay. Is it fair to say that  
 8 with respect to decisions about energy  
 9 supply in your household that -- that  
 10 you're in charge of that?  
 11 A. Yes.  
 12 Q. Okay. You're the one who  
 13 primarily is responsible for shopping and  
 14 comparing rates?  
 15 A. Yes. Correct.  
 16 Q. Okay. And you may consult with  
 17 your wife before enrolling in a new plan,  
 18 but it's mostly something that you handle,  
 19 in terms of the selection of the company,  
 20 right?  
 21 A. Yes.  
 22 Q. And in terms of reviewing and  
 23 paying bills, that's something that is --  
 24 primarily what you take care of as well,  
 25 right?

Page 20

1 B. MIRKIN  
 2 A. Yes. Correct.  
 3 Q. Who is your current electricity  
 4 supplier? It's Con Ed?  
 5 A. Con Edison, yes.  
 6 Q. And it has been since 2016?  
 7 A. I need to -- can I look --  
 8 Q. Yes, sir. There's a document --  
 9 you've got it in your hand there,  
 10 Exhibit 1. And it shows a --  
 11 A. 2016, it looks like.  
 12 Q. That document that you have in  
 13 your hand, Exhibit 1, is a Con Edison  
 14 document, or it has Con Edison's logo at  
 15 the top. And it shows a list of ESCOs on  
 16 the right-hand side.  
 17 Do you see that?  
 18 A. Yes.  
 19 Q. And you have had service  
 20 agreements with each of those ESCOs for  
 21 electricity service?  
 22 A. Yes. Correct.  
 23 Q. Have you ever had any contracts  
 24 for electricity supply from any other  
 25 ESCOs?

Page 21

1 B. MIRKIN  
 2 A. Only those listed.  
 3 Q. Only -- only the five listed?  
 4 A. Only this, yes. Five.  
 5 MR. WITTELS: For electricity,  
 6 correct.  
 7 A. Only this, yes.  
 8 Q. Yes, sir.  
 9 So what it shows -- you seemed a  
 10 little bit confused by my last question.  
 11 Maybe not. But what I meant was, in the  
 12 ESCO column, it lists, over time, in the  
 13 order in which you contracted with these  
 14 companies: Energy Plus, Citizens  
 15 Choice --  
 16 A. Yes.  
 17 Q. -- XOOM, Viridian, and Reliant?  
 18 A. Correct.  
 19 Q. To the best of your knowledge,  
 20 those are the only five ESCOs that you've  
 21 ever contracted with for electricity  
 22 supply?  
 23 A. Correct. Yes.  
 24 Q. Have you ever contracted with an  
 25 ESCO for natural gas supply?

Page 22

1 B. MIRKIN  
 2 A. Yes, I also did.  
 3 Q. Okay. What ESCO was that?  
 4 A. That was Citizens Choice. There  
 5 were two. One was Citizens Choice. The  
 6 other one, I don't remember.  
 7 Q. That's okay. I'm just trying to  
 8 get your best testimony on things today.  
 9 If there's certain things you don't  
 10 remember or you don't know, that's  
 11 perfectly fine.  
 12 With respect to Citizens Choice  
 13 electricity service, the document that's  
 14 Exhibit 1 indicates that you had  
 15 electricity supply from Citizens Choice  
 16 from September of 2012 into January of  
 17 2013.  
 18 Do you see that?  
 19 A. Yes, I see that.  
 20 Q. And would that have been the  
 21 same period of time that you had natural  
 22 gas service with Citizens Choice,  
 23 roundabout?  
 24 A. Not necessarily. I don't  
 25 remember. It was years ago. Not

Page 23

1 B. MIRKIN  
 2 necessarily the same time period. I don't  
 3 remember.  
 4 Q. That's fine.  
 5 And you don't remember if it was  
 6 earlier or later?  
 7 A. I don't remember.  
 8 Q. Okay. Your current supplier for  
 9 natural gas is National Grid?  
 10 A. National Grid, yes.  
 11 Q. Okay. And it has been for many  
 12 years?  
 13 A. National Grid? Last time I used  
 14 an ESCO was early this year.  
 15 Q. For natural gas?  
 16 A. For natural gas, yes.  
 17 Q. And which ESCO was that?  
 18 A. I don't remember.  
 19 Q. It's okay.  
 20 A. All I remember is I switched  
 21 back to National Grid early this year.  
 22 Q. Okay.  
 23 A. I completely forgot the name.  
 24 There's so many names, so many companies.  
 25 Q. That's okay.

Page 24

1 B. MIRKIN  
 2 Well, let's talk about XOOM --  
 3 A. Yes.  
 4 Q. -- which is the one we're here  
 5 to talk about today.  
 6 How did you first hear about  
 7 XOOM?  
 8 A. I was shopping around for better  
 9 rates. There were multiple ESCOs  
 10 available, and they had different offers.  
 11 And I found XOOM. It seemed that their  
 12 rate was better than previous ESCO rates,  
 13 so I switched to XOOM.  
 14 Q. Okay. And you -- that shopping  
 15 and those comparisons that you were doing  
 16 were by comparing the rate that XOOM was  
 17 offering to your current -- your rate --  
 18 then current rate with Citizens Choice?  
 19 That was one part of it, right?  
 20 A. Correct.  
 21 Q. And the other part was to  
 22 compare the rates that were being offered  
 23 by other ESCOs, which you reviewed online?  
 24 A. Correct. Yes.  
 25 Q. Did you speak with anyone on the

Page 25

1 B. MIRKIN  
 2 telephone or in person with XOOM?  
 3 A. I believe I spoke to somebody,  
 4 yes, to switch. Yes, I spoke to somebody.  
 5 I don't remember if in person or by phone,  
 6 but I spoke to somebody.  
 7 Q. Okay. Would it have been after  
 8 you enrolled, there was a telephone call  
 9 to confirm the details of your enrollment?  
 10 MR. WITTELS: Objection.  
 11 Q. Does that sound familiar?  
 12 MR. WITTELS: Objection to form.  
 13 You can answer.  
 14 A. That was, in order to switch to  
 15 XOOM, I spoke to somebody.  
 16 Q. Okay. I think we're saying the  
 17 same thing. You went online and enrolled,  
 18 and then you spoke to someone with XOOM?  
 19 A. I believe so, yes.  
 20 Q. Okay. When you enrolled with  
 21 XOOM -- let me hand you what I'm going to  
 22 mark as Exhibit 6 to your deposition.  
 23 [Whereupon, document was marked  
 24 as Defendants' Exhibit 6 for  
 25 identification, as of this date.]

Page 26

1 B. MIRKIN  
 2 Q. Do you remember receiving an  
 3 e-mail -- this e-mail from XOOM?  
 4 A. Yes. This is my e-mail.  
 5 Q. The e-mail address that's listed  
 6 there under the billing info is your  
 7 e-mail address?  
 8 A. It's mine, yes.  
 9 Q. Is that your phone number  
 10 as well?  
 11 A. And my phone number, yes.  
 12 Q. Okay. The account was opened in  
 13 your wife's name?  
 14 A. Correct. Yes.  
 15 Q. And why was that?  
 16 A. At the time, she needed proof of  
 17 residence.  
 18 Q. Got it.  
 19 At the time you enrolled with  
 20 XOOM, did you understand that your rate  
 21 would be a rate that could vary from month  
 22 to month?  
 23 A. Yes. The contract said so.  
 24 Q. And if you look with me at  
 25 Exhibit 5 -- it's in the stack that you

Page 27

1 B. MIRKIN  
 2 have in front of you.  
 3 A. Yes.  
 4 Q. Does Exhibit 5 appear to be the  
 5 terms and conditions that you received  
 6 from XOOM governing your electricity  
 7 service?  
 8 A. Yes.  
 9 Q. And you're not contending in the  
 10 lawsuit that there's any other contract at  
 11 issue between you and XOOM, right?  
 12 MR. WITTELS: Objection.  
 13 Q. You can answer.  
 14 MR. WITTELS: Do you understand  
 15 the question?  
 16 A. That's the only contract?  
 17 Q. That's what I'm getting at.  
 18 This is my only chance to talk to you, so  
 19 some of the questions -- I just -- you and  
 20 I have never spoken before, and I'm trying  
 21 to be sure I understand what your  
 22 contentions are in this lawsuit. I think  
 23 I do, but sometimes I may just need to  
 24 confirm them.  
 25 So that's what I'm getting at.

Page 28

1 B. MIRKIN  
 2 This Exhibit 5 is the only contract that  
 3 you have had with XOOM, correct?  
 4 MR. WITTELS: Objection.  
 5 A. As far as I know, this is the  
 6 only contract.  
 7 Q. Okay. And in this case, you're  
 8 alleging that XOOM breached this contract,  
 9 right?  
 10 A. Yes, I do.  
 11 Q. Okay. You're not alleging that  
 12 XOOM -- that a salesperson on the phone  
 13 lied to you about something, right?  
 14 MR. WITTELS: Objection.  
 15 You can answer.  
 16 THE WITNESS: I can answer?  
 17 A. No, I'm not blaming any  
 18 salesperson.  
 19 Q. Okay. And you're not alleging  
 20 that there are any marketing materials  
 21 that were on the website or otherwise  
 22 shown to you that deceived you about  
 23 XOOM's rates?  
 24 MR. WITTELS: Objection.  
 25 THE WITNESS: I can still

Page 29



1 B. MIRKIN  
 2 answer?  
 3 Q. Yes.  
 4 MR. WITTELS: Yeah, if you  
 5 remember.  
 6 A. What was the question?  
 7 MR. MATTHEWS: Could you read it  
 8 back for him?  
 9 [Whereupon, a portion of the  
 10 testimony was read back.]  
 11 MR. MATTHEWS: Let me just ask  
 12 it again.  
 13 Q. You're not alleging that XOOM  
 14 misrepresented anything to you in  
 15 marketing materials or on its website,  
 16 right?  
 17 MR. WITTELS: Objection.  
 18 THE WITNESS: I don't have to  
 19 answer?  
 20 MR. WITTELS: No, you have to  
 21 answer.  
 22 A. I'm only alleging that the  
 23 contract says that the cost or the rate  
 24 will be based on XOOM's actual and  
 25 estimated supply costs. And that was not

Page 30

1 B. MIRKIN  
 2 the case.  
 3 Q. That's all I'm getting at. I'm  
 4 not trying to trick you. I just -- if we  
 5 go to trial, I don't want to show up and  
 6 you say, and then a door-to-door salesman  
 7 showed up and lied to me about this.  
 8 That's what I'm trying to figure out.  
 9 So your claim in this case is  
 10 about an alleged breach of the terms and  
 11 conditions that are Exhibit 5 to -- what  
 12 you have in front you, right?  
 13 MR. WITTELS: Object to the form  
 14 of that question.  
 15 But you can answer it.  
 16 I mean, it's not a statement,  
 17 not a question.  
 18 A. Yeah, I allege that the contract  
 19 wasn't followed properly or correct.  
 20 Q. You're not alleging any sort of  
 21 verbal misrepresentations to you, though,  
 22 right?  
 23 MR. WITTELS: Objection.  
 24 A. Correct. I don't.  
 25 Q. Okay. Great.

Page 31

1 B. MIRKIN  
 2 The contract that you have in  
 3 front of you, Exhibit 5, it does not  
 4 contain a promise from XOOM that your  
 5 variable rates would beat the utility  
 6 rate, right?  
 7 MR. WITTELS: Objection.  
 8 THE WITNESS: Do I still have to  
 9 answer?  
 10 MR. WITTELS: Yeah. Unless I  
 11 tell you not to, you have to answer.  
 12 A. It doesn't have any promise. It  
 13 just -- it does say the rate will be based  
 14 on actual and estimated supply. And I  
 15 understand that the word "based" -- "based  
 16 on" is synonymous to a promise.  
 17 Q. Right. But I'm asking a  
 18 different question, which is, the contract  
 19 didn't say, We promise that your rate will  
 20 be better than the utility rate --  
 21 MR. WITTELS: Objection.  
 22 Q. -- right?  
 23 MR. WITTELS: Objection.  
 24 A. As far as I understand, correct.  
 25 Yes.

Page 32

1 B. MIRKIN  
 2 Q. Okay. And it didn't say that  
 3 the variable rate would be equal to or  
 4 better than rates charged by other ESCOs,  
 5 right?  
 6 MR. WITTELS: Objection. The  
 7 contract speaks for -- well, I don't  
 8 understand. Double negatives.  
 9 Go ahead. You can answer.  
 10 A. Before switching to XOOM, I  
 11 compared rates. So I switched for a  
 12 reason. The rate that was promised was  
 13 lower than the previous ESCO.  
 14 Q. The initial rate was?  
 15 A. The initial rate was, yes.  
 16 Q. But the contract doesn't promise  
 17 that the subsequent months' rates will be  
 18 better than other ESCO rates, right?  
 19 MR. WITTELS: Objection.  
 20 THE WITNESS: I should --  
 21 MR. WITTELS: Yeah, it's a  
 22 follow-up.  
 23 A. Right.  
 24 Q. Okay. The contract, as you  
 25 said, states that XOOM's monthly variable

Page 33



1 B. MIRKIN  
 2 Q. Or, well, it's -- you know that  
 3 an ESCO is not the same thing as the  
 4 utility, right?  
 5 A. It didn't matter to me. All  
 6 that matters is what rates I would get.  
 7 Private or semiprivate don't make a  
 8 difference.  
 9 Q. Right. But do you have an  
 10 understanding about how the utilities  
 11 rates are set?  
 12 A. Not really.  
 13 Q. Okay.  
 14 A. No.  
 15 Q. You were able to cancel the XOOM  
 16 contract at any time, right?  
 17 A. If I wanted, I would be able to,  
 18 yes.  
 19 Q. Without penalty?  
 20 A. There would be no penalty, yes.  
 21 Q. You did switch from XOOM to  
 22 Viridian in October of 2013, right?  
 23 A. Yes, I did.  
 24 Q. And why did you switch from XOOM  
 25 to Viridian?

Page 38

1 B. MIRKIN  
 2 A. After being a XOOM customer for  
 3 a while, I shopped around again for better  
 4 rates. I wasn't too happy with XOOM's  
 5 rates, so I found another ESCO that  
 6 offered me a better price.  
 7 Q. Right.  
 8 How did that go?  
 9 A. I switched to Viridian, and I  
 10 used that ESCO for a while. And I shopped  
 11 around again, and I switched again.  
 12 Q. You ended up suing Viridian in a  
 13 putative class action like this, based on  
 14 its variable rates, right?  
 15 A. Yes.  
 16 Q. Okay. Let's see.  
 17 Why did you decide to sue  
 18 Viridian?  
 19 A. Their rates seemed to be not  
 20 competitive, so I got in touch with  
 21 attorneys. And they advised me that I  
 22 could have a case, and I could represent  
 23 others also.  
 24 Q. Got it.  
 25 And that was Mr. Wittels' firm

Page 39


1 B. MIRKIN  
 2 and Daniel --  
 3 A. Daniel Hymowitz.  
 4 Q. -- Hymowitz?  
 5 A. Yes.  
 6 Q. To your knowledge, do you have  
 7 agreements with any other attorneys  
 8 related to this lawsuit against XOOM?  
 9 A. No. Same attorneys.  
 10 Q. Got it.  
 11 You understand in this lawsuit  
 12 you're seeking to represent a class of  
 13 other XOOM customers?  
 14 A. Yes, I am. I know.  
 15 Q. And you understand that as the  
 16 named plaintiff, you have a duty to  
 17 represent their interests as well as  
 18 yours, right?  
 19 A. That's correct. Yes.  
 20 Q. And you understand that in  
 21 connection with doing that, you may have  
 22 to attend the trial, right?  
 23 A. Yes.  
 24 Q. And you don't have a problem  
 25 with that?

Page 40

1 B. MIRKIN  
 2 A. No problem.  
 3 Q. And you understand that at the  
 4 end of the day, you may not be compensated  
 5 more than any of the other class members,  
 6 right?  
 7 A. I understand that.  
 8 Q. And you're willing to help your  
 9 attorneys through the end, regardless?  
 10 A. Yes. Correct.  
 11 Q. Okay. Mr. Mirkin, aside from  
 12 the lawsuit against XOOM and the lawsuit  
 13 against Viridian, what other lawsuits have  
 14 you been a party to?  
 15 A. I had -- years ago, I had an  
 16 eviction case.  
 17 Q. In that case, were you seeking  
 18 to evict someone, or were you being  
 19 evicted?  
 20 A. I evicted somebody.  
 21 Q. Okay.  
 22 A. And I think I had another case,  
 23 just years ago, I may not have.  
 24 Q. Okay. The eviction proceeding,  
 25 you owned another property at some time?

Page 41

<p>1 B. MIRKIN</p> <p>2 A. It was a co-op apartment.</p> <p>3 Q. Okay. What was the address for</p> <p>4 that apartment?</p> <p>5 A. The address was 1620 Avenue I,</p> <p>6 in Brooklyn.</p> <p>7 Q. Thank you.</p> <p>8 Any other lawsuits that you</p> <p>9 recall?</p> <p>10 A. I think there was another one.</p> <p>11 I just don't remember. It wasn't</p> <p>12 recently. I don't remember.</p> <p>13 [Whereupon, testimony continues</p> <p>14 in confidential transcript.]</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 42</p>	<p>1</p> <p>2 MR. MATTHEWS: Subject to</p> <p>3 additional questions that were not</p> <p>4 permitted today, I will pass the</p> <p>5 witness.</p> <p>6 And I appreciate your time.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. WITTELS: No questions,</p> <p>9 which is very rare for me.</p> <p>10 MR. MATTHEWS: Okay. Thank you.</p> <p>11 THE VIDEOGRAPHER: We are off</p> <p>12 the record at 2:20 p.m. And this</p> <p>13 concludes today's testimony given by</p> <p>14 Boris Mirkin.</p> <p>15</p> <p>16 [TIME NOTED: 2:19 p.m.]</p> <p>17</p> <p>18 _____</p> <p>19 BORIS MIRKIN</p> <p>20 _____</p> <p>21 SUBSCRIBED AND SWORN TO</p> <p>22 BEFORE ME THIS _____</p> <p>23 DAY OF _____, 2022.</p> <p>24</p> <p>25 _____</p> <p>26 NOTARY PUBLIC</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>Page 49</p>
<p>1 B. MIRKIN</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 [Whereupon, a short break was</p> <p>13 taken.]</p> <p>14 THE VIDEOGRAPHER: We're back on</p> <p>15 the record at 2:19 p.m.</p> <p>16 Q. Mr. Mirkin, you told me you</p> <p>17 personally have never been a XOOM natural</p> <p>18 gas customer, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And you don't have any</p> <p>21 personal knowledge about the variable</p> <p>22 rates that XOOM charged natural gas</p> <p>23 customers in New York, right?</p> <p>24 A. Correct.</p> <p>25 Q. Okay.</p> <p>Page 48</p>	<p>1</p> <p>2 I N D E X</p> <p>3</p> <p>4 WITNESS EXAMINATION BY PAGE</p> <p>5 BORIS MIRKIN MATT MATTHEWS 7</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 PLAINTIFF'S DESCRIPTION PAGE</p> <p>9 EXHIBIT 6 - E-MAIL FROM XOOM 26</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 50</p>

1  
2 CERTIFICATION  
3  
4 I, Samuel Hittin, a Notary Public for  
5 and within the State of New York, do  
6 hereby certify:  
7 That the witness whose testimony as  
8 herein set forth, was duly sworn by me;  
9 and that the within transcript is a true  
10 record of the testimony given by said  
11 witness.  
12 I further certify that I am not  
13 related to any of the parties to this  
14 action by blood or marriage, and that I am  
15 in no way interested in the outcome of  
16 this matter.  
17 IN WITNESS WHEREOF, I have hereunto  
18 set my hand this 6th day of September,  
19 2022.  
20  
21  
22   
23 SAMUEL HITTIN  
24 \* \* \*  
25

Page 51

1  
2 ERRATA SHEET  
3 VERITEXT/NEW YORK REPORTING, LLC  
4 CASE NAME: SUSANNA MIRKIN AND BORIS  
5 MIRKIN, ET AL VS. XOOM ENERGY,  
6 LLC, ET AL  
7 DATE OF DEPOSITION: AUGUST 30, 2022  
8 WITNESS' NAME: BORIS MIRKIN  
9  
10 PAGE/LINE(S)/ CHANGE REASON  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21 BORIS MIRKIN  
22 SUBSCRIBED AND SWORN TO  
23 BEFORE ME THIS DAY  
24 OF , 2022.  
25 NOTARY PUBLIC  
MY COMMISSION EXPIRES

Page 52